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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. **20**

OSCAR F. TREICHER, EXECUTOR OF THE ESTATE OF
FRED A. MILLER,

Appellant,

vs.

STATE OF WISCONSIN

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

MOTION BY AMICUS CURIAE FOR
PERMISSION TO PRESENT ORAL ARGUMENT

J. GILBERT HARDGROVE,
Attorney and
Amicus Curiae

MILLER, MACK & FAIRCHILD,
Of Counsel

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 547

OSCAR F. TREICHLER, EXECUTOR OF THE ESTATE OF
FRED A. MILLER,

Appellant,

vs.

STATE OF WISCONSIN

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

MOTION BY AMICUS CURIAE FOR PERMISSION TO PRESENT ORAL ARGUMENT

This motion is made pursuant to the written consent of attorneys for appellant and appellee in the above-entitled cause, and its object is to request for the undersigned the right to deliver oral argument herein.

The facts upon which this motion is based are as follows:

1. The undersigned has previously appeared and filed a statement re jurisdiction and a brief as *amicus curiae* herein.

2. The law firm of Miller, Mack & Fairchild of Milwaukee, Wisconsin; of which the undersigned is a

partner, is counsel for the Estate of Sarah E. B. Allis, deceased, which is presently being probated in the County Court of Milwaukee County, Wisconsin.

3. Said estate of Sarah E. B. Allis, deceased, is subject to the application of the same three tax statutes, to-wit: Wis. Stats. Sections 72.01-72.24, 72.50-72.61 and 72.74, which were construed and applied by the Wisconsin Supreme Court to the Estate of Fred A. Miller in the case at bar, and which are the subject of this appeal.

4. Pending the final judgment of this Court herein, the following stipulation has been entered into regarding an appeal to the Wisconsin Supreme Court in connection with the application of said statutes to the Estate of Sarah E. B. Allis, deceased:

"State of Wisconsin
Supreme Court

In the Matter of the
Estate of

SARAH E. B. ALLIS,

Deceased.

STIPULATION

An appeal having been taken by the State of Wisconsin to the Supreme Court of the State of Wisconsin from the order determining the inheritance, emergency and estate taxes, which was made, entered and filed in the above entitled matter by the County Court of Milwaukee on the 4th day of November, 1948, which appeal involves the same issues which were adjudicated by said Supreme Court in the case of Estate of Fred A. Miller;

And it appearing that an appeal is being taken to the United States Supreme Court from the decision

of the Wisconsin Supreme Court in the said case of Estate of Fred A. Miller, the adjudication of which appeal may finally determine the questions involved in the instant estate;

Now Therefore, It Is Hereby Stipulated that the said appeal in the instant estate shall be held in abeyance pending the final adjudication of the appeal to the United States Supreme Court in the said Estate of Fred A. Miller.

Dated this 10th day of January, 1949.

MILLER, MACK & FAIRCHILD
Attorneys for Arthur W. Fairchild,
Executor

Thomas E. Fairchild, Attorney General
By Harold H. Persons
Assistant Attorney General

5. The said law firm of the undersigned is also counsel for another Wisconsin estate, in which the Wisconsin inheritance and estate taxes have not yet been determined, but wherein it is contemplated that the identical question presented in the case at bar will arise.

6. Since the probate of the estate of Fred A. Miller, deceased, and the appeals therefrom to the Supreme Court of Wisconsin and to this Court, have taken place before it has been possible to take similar steps in the two estates for which the undersigned is one of the attorneys, the executors of said two estates now find themselves in the position where their rights under the above tax statutes will be as effectively concluded by the decision of this Court in the case at bar as if they were themselves parties herein.

7. On the basis of these facts, the undersigned considers it reasonable that he should request permission to

deliver oral argument herein, since, in the absence of such permission, there will be no court in which he will have the opportunity effectively to be heard on behalf of the estates which he represents.

8. The undersigned has received written consent to make this motion from Alexander W. Schutz, Esq., the attorney for appellant herein, and from Thomas E. Fairchild, Esq., Attorney General of the State of Wisconsin, attorney for appellee. Said consent, and a letter from the Attorney General of the State of Wisconsin pertaining thereto, are reproduced in the appendix to this motion.

9. The undersigned is prepared to confine any oral argument which he may present to the subject matter contained in his brief *amicus curiae*, which is on file in this case, and which has been served on the attorneys for appellant and appellee herein within the time required for service of appellant's brief. The undersigned further agrees that his oral argument may follow immediately upon the opening argument of the attorney for appellant and precede the argument of the attorney for appellee.

Wherefore, the undersigned respectfully moves this Court that he be granted permission to present oral argument upon such conditions as this Court deems proper, and at such time as the above-entitled cause shall be heard before this Court.

Dated this 19th day of August, 1949.

J. GILBERT HARDGROVE,

Attorney and Amicus Curiae.

MILLER, MACK & FAIRCHILD,

Of Counsel.

APPENDIX

In the
 Supreme Court of the United States
 October 1948 Term
 No. 547

In re Will of FRED A. MILLER,
Deceased.

STATE OF WISCONSIN,
Appellant below,
Appellee herein,

OSCAR F. TREICHLER,
 Executor,
Respondent below,
Appellant herein.

Consent of Attorneys
 for Appellant and
 Appellee re Oral
 Argument by Amicus
 Curiae

Be It Known that the undersigned, attorneys for the Appellant and the Appellee in the above-entitled cause, do hereby consent that J. Gilbert Hardgrove, Esq., who has appeared as *amicus curiae* herein, may move this court for permission to present oral argument at the time said cause is heard.

Dated this 27th day of July, 1949.

A. W. Schutz,
 Attorney for Appellant.
 Thomas E. Fairchild,
 Attorney General of the
 State of Wisconsin.
 Attorney for Appellee.

THE STATE OF WISCONSIN
Office of Attorney General
MADISON

August 15, 1949

Miller, Mack & Fairchild
Attorneys at Law
First National Bank Bldg.
735 North Water Street
Milwaukee 2, Wisconsin

Attention: Mr. Thomas B. Fifield

Gentlemen:

Re: *State of Wis. v. Oscar F. Treichler, Extr.*

No. 547—Oct. 1948 Term, U.S. Sup. Ct.

Herewith we enclose original consent that Mr. J. Gilbert Hardgrove, *Amicus Curiae*, may present oral argument. This consent is given upon condition that any such argument will be as a part of or following the opening argument of counsel for the appellant so that it precedes our argument for the appellee, and also that the argument to be made will be set forth in a brief *amicus curiae* that is served upon us within the time required for the service of Brief of Appellant.

Yours very truly,

Thomas E. Fairchild,
Attorney General

By Harold H. Persons (s)
Harold H. Persons,
Assistant Attorney General

HHP:W

Encl. 1